Supreme Court, U.S.
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No. 01-107

IN THE

Supreme Court of the United States

ULYSSES I & COMPANY, INC.,

Petitioner,

v.

PETER MORTON, GARY FELDSTEIN, MARA GIBBS, THE STATE OF NEW YORK, SUFFOLK COUNTY, THE INCORPORATED VILLAGE OF EAST HAMPTON, and EDWARD P. ROMAINE, as CLERK OF SUFFOLK COUNTY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION FOR INCORPORATED VILLAGE OF EAST HAMPTON

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QUESTION PRESENTED

Whether the complaint herein failed to adequately allege a claim under 42 U.S.C. § 1983.

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The Incorporated Village of East Hampton ("the Village"), Respondent herein, submits its Brief in Opposition to the Petition for Writ of Certiorari filed by Petitioner, Ulysses I & Company, Inc. ("Ulysses"), to review the judgment of the United States Court of Appeals for the Second Circuit.

For the reasons set forth below, the Petition should be denied as there is no compelling reasons which exist to warrant further review.

STATEMENT OF FACTS AND PROCEEDINGS BELOW

A.

For purposes of this Brief in Opposition, the Village adopts and incorporates by reference the factual rendition of the prior proceedings of the matter *sub judice,* contained in the Joint Brief in Opposition of Respondents, Peter Morton, Gary Feldstein and Mara Gibbs.

B.

It should be observed that, in Count One of the amended complaint, ¶¶74 through 76, Ulysses alleges against that the Village, a named respondent, as follows:

- "[t]he Individual Defendants have acted in wrongful concert to unlawfully deprive Ulysses of its property";

- "[t]he State and Local Government Defendants have each enabled the Individual defendants to deprive

> Ulysses of its property such that Ulysses has been deprived of its property without due process; and in violation of its constitutional rights"; and
>
> - "[b]y reason of the foregoing, the State and Local Government Defendants have violated Ulysses' rights under 42 U.S.C. §1983 and the Due Process Clause of the Constitution."

(JA[1] 35-36)

In Count Two of the amended complaint, Ulysses alleges, in the relevant part of ¶80, that:

> [t]he State and Local Government Defendants have wrongfully exercised their authority over the Premises to deprive Ulysses of its property without due process.

(JA 36)

Although the amended complaint is thirty (30) pages in length, and contains one hundred and twenty-two (122) paragraphs, the Village is only fleetingly mentioned in nine (9) paragraphs, to wit: ¶¶ 12, 13, 14, 55, 57, 58, 61, 62, 72, 75, 76, and 77, none of which contain sufficient allegations to set forth or allege a breach of any federally protected right by the Village.

C.

The amended complaint (JA 12-189) failed to detail the relevance of any of the allegations against the Village given

1. The symbol "JA", followed by a number, is a reference to the Joint Appendix in the Second Circuit.

that the New York State courts have ruled that Feldstein, *and not Ulysses*, properly had title to the disputed property claimed by Ulysses. Simply stated, because the New York State Court conclusively determined that Ulysses had no interest in the property, Ulysses did not own any property of which it could claim deprivation. This invoked the Rooker-Feldman doctrine.

Furthermore, the amended complaint fails to allege, by way of a sustainable pleading, the essential elements of a claim, pursuant to 42 U.S.C. §1983 against the Village.

The amended complaint utterly fails to allege that the Village's police officer was acting pursuant to an established municipal custom or policy which resulted in a violation of Ulysses' constitutional rights. *City of Canton v. Harris*, 489 U.S. 378, 389, 109 S. Ct. 1197, 1205 (1989).

The Amended Complaint at bar cannot be viewed in isolation. Instead, it was the unfortunate, baseless and needless continuance of litigation arising out of the failed real estate transaction.

As a result, the allegations which it contains, were fatally burdened by the series of court decisions emanating from the current and collateral litigation. These rulings precluded Ulysses, as a matter of law, from sustaining a cause of action for a 1983 claim against the Village and to reverse the Second Circuit's affirmance of the trial court's dismissal of the proceeding.

The Second Circuit held, in its opinion, filed April 18, 2001 [No. 00-9189] that:

> The district court's dismissal of the 42 U.S.C. § 1983 against the municipal defendants was also proper. To demonstrate municipal liability under §1983, a plaintiff must prove the existence of a municipal policy, practice or custom that is the cause of the plaintiff's injury. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 694-95 (1978). Such a policy may be inferred from circumstantial proof, but the mere assertion that a municipality has such a policy is generally insufficient to support such an inference. *See Dwares v. City of New York*, 985 F.2d 94, 100 (2d Cir. 1993). "A single incident alleged in a complaint, especially if it involved only actors below the policymaking level, generally will not suffice to raise an inference of the existence of a custom or policy." *Id.* The district court concluded, and we agree, that the allegations in the complaint concerning the municipal defendants fail to state a claim under §1983 because they allege no municipal practice or policy.

The Court should observe that the issues presented by Ulysses in this appeal are based on very specific facts, as set forth in the Record before the Second Circuit. The Second Circuit rendered a trenchant opinion which is relevant only to the parties of this case.

REASONS FOR DENYING THE WRIT

This Case Does Not Meet The Criteria For Review By This Court

The United States Supreme Court has discretion whether to grant a writ of certiorari when it concludes that "compelling reasons" exist to warrant review. RULES OF THE SUPREME COURT OF THE UNITED STATES, RULE 10. Although not exhaustive, Rule 10 lists the significant criteria of governing the grant of a petition for writ of certiorari.

Specifically, the Court may decide to undertake its review if:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

None of these conditions are present in the instant case.

Further review of this matter by this court is not warranted under Rule 10(a) where, as here, the Second Circuit decision is not in conflict with either the decision of another United States Court of Appeals or a decision by a state court of last resort.

Indeed, the decision is fully in accord with this Court's opinion in *Monell v. Department of Social Services*, 436 U.S. 658, 694-95, 98 S. Ct. 2018 (1978), and its progeny.

This Court's evaluation of the Second Circuit's decision is not warranted under Rule 10(b) because no review is sought of a state court opinion.

Additionally, the decision, for which this court is petitioned to consider, does not deviate from or otherwise conflict with this Court's decision in *Monell*, *supra*, so as to compel review under Rule 10(c).

To repeat, the Second Circuit relied upon, and explicitly cited to, the framework established by *Monell*, in holding that:

> . . . the allegations in the complaint concerning the municipal defendants fail to state a claim under §1983 because they allege no municipal practice or policy.

Also, militating against review is that the Second Circuit's decision is unpublished and, therefore, has no precedential value or effect beyond this case.[2]

It does not involve a novel legal issue or an aberration of settled law. The Second Circuit decision does not break any new ground; instead, it simply applies established law to the unique facts of the present case.

This case must be assayed and tested under the rules set forth under Rule 10.

For these reasons, there are no compelling considerations that warrant review by this Court.

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2. The decision states:

> THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORT AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

CONCLUSION

The United States Court of Appeals for the Second Circuit properly affirmed the district court's grant of the Village's motion to dismiss on the grounds that Ulysses failed to state a cause of action. The Second Circuit's opinion is consistent with this Court's decision in *Monell*.

No compelling reason exists to warrant further review by this Court and the Village therefore prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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